

CONGRESSIONAL PRIVACY CAUCUS SLAMS DRAFT PRIVACY REGULATIONS

WASHINGTON, D.C. - The leaders of the bipartisan, bicameral Congressional Privacy Caucus today released a detailed critique of the draft financial privacy regulations issued earlier this year to implement the privacy provisions of the financial modernization legislation that Congress enacted into law last year. The 18- page letter pointed out numerous weaknesses and loopholes in the legislation that the federal financial regulators are trying to implement, but also suggested several ways to improve the financial privacy rule.

"Overall, we believe that the proposed rules, taken as a whole, fail to provide sufficient protections for the privacy of nonpublic personal information," stated the letter, which was signed by Caucus Co-Chairs Representative Edward J. Markey (D-MA), Senator Richard Shelby (R-AL), Senator Richard Bryan (D-NV), and Representative Joe Barton (R-TX), as well as six other Privacy Caucus Members.

The Privacy Caucus comment letter addressed the draft rules for implementing the privacy provisions of the so-called "Gramm-Leach-Bliley Act" or "GLBA", which was enacted into law last fall. In the letter, the Privacy Caucus Members argued that significant gaps in privacy protections were not addressed by the proposed rules.

The letter explained that, "Some of these gaps relate to statutory constraints on your agencies' authority to regulate - such as the Act's failure to give consumers any right to prevent the disclosure of nonpublic personal information to affiliates of a financial services holding company with whom they are doing business, or the joint agreement exemption from the "opt out" right with respect to disclosures to nonaffiliated third parties. The letter added, "Other gaps result from loopholes included in GLBA which provide for the specific exclusion of certain entities or certain practices from the Act."

The letter urges the agencies to endorse legislative reforms such as those contained in H.R. 3320 and S. 1903, the "Consumer's Right to Financial Privacy Act," which was introduced by the Caucus Co-Chairs last fall. This legislation would provide consumer with an across-the-board "opt in" right with respect to the disclosure of nonpublic personal information to either affiliates or nonaffiliated third parties of a financial institution.

In addition, the Congressional Privacy Caucus comment letter makes several recommendations regarding the proposed rule, which include:

- The FTC should adopt a broad interpretation of the term "financial institutions" in order to assure coverage of both traditional and nontraditional financial institutions;
- The Rules should assure that "publicly available information" includes only information which a financial institution actually obtains from a public source, rather than information such institutions assume can theoretically be obtained from such sources (even though the institution has actually obtained such information from a nonpublic source);
- The Rules should make it clear that personally identifiable personal information includes certain types of health information, and that this fact must be disclosed to consumers;
- The Rule should provide consumers with the right to obtain access to and correct the information that financial institutions are collecting about them and disclosing to affiliates or nonaffiliated third parties.
- Financial institutions should have to comply with a consumers decision to "opt out" within 30 days; and,
- Strict limits should be established with respect to reuse of information by third parties and for sharing customer account information with any party.

The Congressional Privacy Caucus letter concludes, "Protecting the consumer's fundamental right to financial privacy is essential to assuring that the public will have confidence that the changes brought about by GLBA are consistent with the public interest. While we commend you for your efforts to craft privacy protections in this area, we believe that flaws in the underlying statute you are seeking to interpret and enforce place severe limitations on your agencies' ability to protect the American public from invasions into their privacy. We believe that in order to address these flaws in the legislative framework under which you are operating, Congress must adopt new legislation, along the lines of H.R. 3320 and S. 1903."

Copies of the Congressional Privacy Caucus letter can be obtained from Representative Markey's office.